

ARTICLE 89-12

MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM

Chapter

89-12-01 Municipal, Rural, and Industrial Water Supply Program

CHAPTER 89-12-01

MINICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM

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89-12-01-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Applicant" means the party submitting a proposal.
2. "Bureau" means the bureau of reclamation or its duly authorized agent.
3. "C-district" means the Garrison Diversion Conservancy District or its duly authorized agent.
4. "City" means any city organized under the laws of this state.
5. "Commission" means the North Dakota state water commission or its designee.
6. "Design and construction" means preparation of the final design plans and the ultimate construction of a project.
7. "Feasibility study" means a report of sufficient detail to provide a sound estimate of capital costs, water costs to users, and operation, maintenance, and replacement costs.
8. "Preliminary engineering report" means a reconnaissance level report containing sufficient information to determine whether additional detailed studies are merited.

9. "Program funds" means money available for municipal, rural, and industrial projects including money available through the Garrison Diversion Reformulation Act of 1986.
10. "Proposal" means an application submitted to the commission for financial assistance from program funds for municipal, rural, and industrial projects and associated costs.
11. "Public water system" means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals.
12. "Regional water system" is a system that provides water to at least four public water systems and may also include rural water users.
13. "Rural water users" means all users, including farms, unincorporated cities, villages, trailer courts, and livestock, excluding cities.
14. "State engineer" means the individual appointed by the commission pursuant to North Dakota Century Code section 61-03-01 or the state engineer's designee.

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General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-02. Eligibility for program funds. The following projects and associated costs are eligible for financial assistance from program funds:

1. Water supply projects.
 - a. Design and construction of projects for supplying water including:
 - (1) New ground water wells including mechanical and electrical components.
 - (2) Pipelines from water sources to public water systems and principal supply works for rural water systems.
 - (3) Booster pumping plants for supply lines.
 - (4) Intake works and pumping plants for new surface water source.
 - (5) New or enlarged storage facilities.
 - (6) New rural water systems or enlargements or extensions of rural water systems.

- (7) New regional water systems or enlargements or extensions of regional water systems.
- b. Design and construction of water treatment projects including:
 - (1) New water treatment plants.
 - (2) Modifications to and upgrades of existing water treatment plants.
2. Program funds may be used for engineering, legal, and right-of-way costs, excluding the purchase of easements, and costs incurred in conducting environmental reviews or cultural resources investigations associated with the planning and design and construction of projects listed in subdivisions a and b of subsection 1.
3. Program funds are not available for costs associated with operation, maintenance, and replacement of water supply or treatment systems or with the preparation of the preliminary engineering report.

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89-12-01-03. Application.

1. An applicant must submit an application for program funds to the state engineer at the following address:

North Dakota State Water Commission
900 East Boulevard Avenue
Bismarck, North Dakota 58505-0850

The application must include the following:

- a. Information explaining the need for the proposal, including its objectives and benefits.
- b. The area to be served by the proposal.
- c. Maps, diagrams, or other illustrated documentation if these will make the proposal more understandable.
- d. The approximate cost of carrying out the proposal, if available.
- e. The amount of funding sought from program funds and the amount the applicant intends to contribute to carry out the proposal.

- f. Efforts made, and the results, to secure funds from sources other than program funds. If available, provide the current rate schedule for the water supply and treatment system.
 9. Other information the applicant believes pertinent or requested by the state engineer.
2. A copy of the application must also be sent to the c-district at the following address:

Garrison Diversion Conservancy District
P.O. Box 140
Carrington, North Dakota 58421

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General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-04. Application to determine eligibility - Initial review by the state engineer. After the initial review of an application, the state engineer may decide:

1. The proposal is eligible for funding from program funds. If the proposal is eligible for funding, the state engineer shall notify the applicant in writing.
2. The information provided is inadequate to review the proposal and may order the applicant to provide more information, or may obtain more information.
3. The proposal is not eligible for funding from program funds. The state engineer shall notify the applicant of and include the reasons for ineligibility in writing.
4. The state engineer shall submit a copy of all notifications to the c-district.

History: Effective June 1, 1994.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-05. Preliminary engineering reports - Initial review by state engineer - Bureau requirements.

1. An applicant notified that its project is eligible for funding must submit a preliminary engineering report to the state engineer. The applicant shall contact the bureau at the initiation of the preliminary engineering report to discuss applicable federal requirements. The preliminary engineering report must contain:

- a. Name of the project sponsor and contact persons.
- b. A brief summary of the proposed project including:
 - (1) Identification of the use of water and estimated water for each use.
 - (2) Description of existing water quantity and quality.
 - (3) Explanation of inadequacy of existing supplies.
 - (4) Estimate of potential users.
 - (5) User interest and how it was determined.
- c. A map of the project area showing:
 - (1) Water sources (aquifers, lake, stream, other systems).
 - (2) Proposed facilities.
 - (3) Distribution systems.
 - (4) Alternatives.
- d. Preliminary costs estimate for feasibility study, capital costs, and costs for all alternatives.
- e. Repayment concepts.
- f. Funding source for the applicant's share.
- g. Proposed project schedule.
- h. Identification of entity responsible for applicable reports or studies.
- i. Availability and cost of construction material.
- j. Social and local economic climate.
- k. Special or unusual considerations such as public and construction safety, repayment contracts, biota transfer, and environmental.
- l. Special site conditions such as ground water table, soil conditions, right of way, and zoning constraints, and manmade features.
- m. Project's energy requirements and date of service.

- n. Documentation of the engineering selection process.
 - o. Project's potential effect on economic development within project area.
 - p. Documentation of cultural resources in the affected project area.
 - q. An outline of the water conservation plan.
 - r. Action necessary and action taken to comply with all applicable state and federal laws including the National Environmental Policy Act, Fish and Wildlife Coordination Act, Endangered Species Act, Clean Water Act, and state and federal laws pertaining to identification and preservation of cultural resources with letters from the appropriate agencies.
 - s. Other information requested by the state engineer.
2. The applicant must consider whether an alternative project could satisfy the objectives of the applicant. The preliminary engineering report must set forth a general discussion of all other alternatives considered before and during report preparation, a description of the preferred alternative, and a no action alternative.
 3. The applicant shall submit one copy of the preliminary engineering report to the c-district and copies to the bureau as specified by the state engineer.
 4. After initial review of the preliminary engineering report, the state engineer may decide:
 - a. The proposal is, or parts of the proposal are, eligible for program funds. The state engineer shall notify the applicant in writing that the proposal is, or parts of it are, eligible for funding.
 - b. The information provided is inadequate and may order the applicant to provide more information, or may obtain more information.
 - c. The proposal or parts of the proposal are not eligible for program funds. The state engineer shall notify the applicant and include the reasons for ineligibility in writing.

- d. The state engineer shall submit a copy of all notifications to the c-district.

History: Effective June 1, 1994.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-06. Feasibility study - Review - Report.

1. An applicant whose project is eligible to receive program funds must submit a copy of a feasibility study to the state engineer. The feasibility study must include the following information:
 - a. All the information required by subdivisions a, b, c, e, f, g, h, i, j, k, l, m, n, o, and r of subsection 1 of section 89-12-01-05. This information, however, must be updated and submitted in more detail and clarity.
 - b. Project plans and alternative plans with a description of the preferred alternative.
 - c. A description of proposed water treatment and storage facilities.
 - d. Design criteria including population projections and water demands.
 - e. Ability and willingness of beneficiaries to pay capital and other costs.
 - f. Cost estimates for capital and other costs.
 - g. Economic and engineering project cost analyses.
 - h. Design and operation alternatives.
 - i. Methods of construction.
 - j. Operation, maintenance, and replacement plan.
 - k. Entity responsible for operation, maintenance, and replacement.
 - l. Entity responsible for administration of contracts.
 - m. A county soil map with prime farmland indicated.
 - n. Water conservation plan.

- o. Any other information requested by the state engineer.
2. For projects that deliver Missouri River water to the Hudson Bay drainage area, a determination must be made that treatment will be provided to meet requirements of the Boundary Waters Treaty Act of 1909.
3. The applicant shall submit one copy of the feasibility study to the c-district and copies to the bureau as specified by the state engineer.
4. After review of the feasibility study, the state engineer shall prepare a report setting forth its recommendations regarding the project. The report shall address whether the project is consistent with statewide plans and programs.
5. The state engineer shall provide a copy of the report to the commission and c-district.

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General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-07. Design and construction requirements.

1. In order to receive program funds for design and construction, an applicant must submit to the state engineer:
 - a. Documentation of the engineering selection process for design and construction engineering services and a copy of the contract for engineering services for design and construction.
 - b. Engineering plans, designs, and specifications not less than forty days prior to the start of the invitation to bid date.
2. No construction contract may be awarded or construction initiated until the plans, designs, and specifications have been approved by the state engineer, c-district, and bureau. Any changes in plans must be approved by the state engineer, c-district, and bureau.
3. Construction contracts over two thousand dollars must incorporate the Davis-Bacon wage rate unless otherwise specified.
4. The entity responsible for operation, maintenance, and replacement shall contract with water users for payment of:
 - a. Water delivery.
 - b. Hookup.

- c. Standby service charges.
 - d. Other fees necessary.
5. Documentation of the following must be made available to the state engineer and c-district prior to the applicant receiving construction funds:
- a. Procurement process for services and goods.
 - b. Necessary state water right permits.
 - c. Necessary state permits controlling diversion and distribution.
 - d. Rights of way for construction (easements).
 - e. All contracts relating to the project.
 - f. Applicable federal permits.

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General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-08. Funding - Priority.

1. The commission shall evaluate each eligible project based on the following criteria:
- a. Need for improving water supply quantity and quality problems or both.
 - b. Local contribution to project funding.
 - c. Location of project.
 - d. Equitable distribution of municipal, rural and industrial funds.
 - e. Ability to pay.
 - f. Economic development.
 - g. Water conservation plan.
 - h. Other criteria determined to be relevant by the commission.

Based upon these evaluations, the commission shall rank the eligible projects in priority order which, based on its judgment, are in most need of funding. A report ranking the eligible projects must be in writing and include data substantiating the determinations. This data must be available to the public upon written request.

2. Program funds must be provided to eligible projects to the extent funding is available as determined by the commission, after consultation with the c-district. Program funds may be provided in the form of grants or loans, or both, and may be provided for a feasibility study or for design or construction of a project, or a combination of the three. The commission, after consultation with the c-district, shall decide whether to provide program funds, and the amount of funds, to an applicant for a feasibility study or for design or construction of a project, or a combination of the three.

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Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-09. Reports to commission and c-district. After a project has been determined to be eligible for program funds, a report must be submitted to the commission and c-district by the end of each quarter regardless of whether funds have been requested. The quarterly report must include:

1. A schedule and cost of work for the upcoming quarter.
2. A written report describing progress during the preceding quarter and the cost of work performed during the preceding quarter.
3. Other information requested by the commission.

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89-12-01-10. Contract awards.

1. Prior to the award of any contract, the applicant shall provide the state engineer and c-district the following:
 - a. A bid abstract.
 - b. A statement of the low bidder's qualifications even if the contract is not awarded to the low bidder.

- c. A statement of intent to award the contract at least fifteen days prior to proposed contract award.
 - d. A written justification describing the reasons for nonselection of the low bidder, and reasons for the proposed selection if the applicant plans to award the contract to other than the low bidder.
- 2. Contracts must be pursuant to applicable federal procurement laws.
- 3. The following items must be submitted to the state engineer and c-district after the award of the contract:
 - a. The contractor's performance and payment bond.
 - b. The contractor's certificate of insurance.
 - c. The contractor's license.
 - d. The contract.
- 4. A construction management plan must be submitted to the state engineer and bureau within thirty days after the award of the contract. The construction management plan must include the following:
 - a. Construction schedules.
 - b. Contract requirements.
 - c. Contractor qualifications, duties, and responsibilities.
 - d. Agreement for engineering services, including description of coordination activities with the commission.
 - e. Field office location, addresses, and phone numbers of project personnel.
 - f. Resumes of professional staff.
 - g. Safety program.
 - h. Other information requested by the state engineer.

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General Authority: NDCC 28-32-02, 61-02-14

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